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**APR 02 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Dubey et al. :  
Application No. 10/666,294 : DECISION DISMISSING  
Filed: 18 September, 2003 : PETITION  
Attorney's Docket No. 2033.66886 :

This is a decision on the petition filed on 29 January, 2004, to accord the above-identified application a filing date of 18 September, 2003, with Figures 4 and 5 as a part of the original disclosure.

The petition is **DISMISSED**.

On 18 September, 2003, the application was filed. On 15 December, 2003, however, Initial Patent Examination Division mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date of 18 September, 2003, but that Figures 4 & 5 described in the specification appeared to have been omitted from the application. A two (2)-month period for reply was set.

In response, on 29 January, 2004, the present petition was filed, accompanied by three (3) sheets of drawings containing Figures 1-5. Petitioners argue that Figures 4-5 was filed with the other application papers deposited in the USPTO on 18 September, 2003. In support, petitioners supplied with the present petition, a copy of a postcard receipt bearing a USPTO Office date stamp of 18 September, 2003, and the above-identified application number and itemizing the filing of three (3) sheets of drawings.

A review of the record reveals that three (3) sheets of drawings containing Figures 1-3 are located in the application file. Figures 4 and 5, however, cannot be located among the application papers deposited on 18 September, 2003.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.<sup>1</sup>

Petitioners argument has been considered, but is not persuasive. The showing of record is that three (3) sheets of drawings containing Figures 1-3 were received in the Office on 18 September, 2003, and petitioner's postcard receipt reflects that the Office received the items listed above. While the postcard itemizes the filing of three (3) sheets of drawings, it, unfortunately, does not itemize the filing of Figures 4 and 5, or any drawing figures at all. Furthermore, counsel's declaration that he counted all of the sheets of drawings and drawing figures prior to filing the application is not more persuasive than the contents of the official file. Absent a showing that Figures 4 and 5 were located within the three (3) sheets of drawings received in the Office on 18 September, 2003, petitioners simply have no evidence that Figures 4 and 5 were located among the application papers received in the Office on that date.

Petitioner may submit Figures 4 and 5 in the form of a preliminary amendment. If Figures 4 and 5 are submitted as a preliminary amendment, they will be reviewed by the examiner for new matter.

As the petition resulted from applicant's filing error and not as a result of an error on the part of the Office, the petition fee will not be refunded.

The application will be processed and examined using the three

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<sup>1</sup> MPEP 503.

(3) sheets of drawings containing Figures 1-3 filed on 18 September, 2003. The sheets of drawings filed with the present petition will not be processed or examined, but will be retained in the application file.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 18 September, 2003, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

A handwritten signature in dark ink, appearing to read "D Wood", is positioned above the typed name.

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions